Supreme Court, U.S.
FILED
DEC 23 1985
JOSEPH F. SPANIOL, JR.
CLERK

(4)

No. 85-5404

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

TERRY B. ALLEN,

Petitioner,

v.

ILLINOIS,

Respondent.

On Writ Of Certiorari
To The Illinois Supreme Court

JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI FILED SEPTEMBER 16, 1985
CERTIORARI GRANTED NOVEMBER 12, 1985

57 pp
6 docs

TABLE OF CONTENTS

	Page
Chronological List of Relevant Docket Entries	iii
Information—Count 1—Filed October 14, 1982, in the Circuit Court of the Tenth Judicial Circuit, Peoria County [hereinafter trial court]	1
Information—Count 2—Filed October 14, 1982, in the Trial Court	2
Petition Filed November 5, 1982, in the Trial Court	3-4
Order of the Trial Court Filed November 5, 1982	5
Final Order of the Trial Court Filed December 17, 1982	6
Bill of Indictment Filed January 4, 1983, in the Trial Court	7-8
Arraignment Order Filed March 2, 1983, in the Trial Court	9
Oral Order of Trial Court Allowing State's Motion to Strike Paragraph Four of Petition	10
Trial Order Filed March 4, 1983	11
Motion to Vacate Filed March 22, 1983, in the Trial Court	12
Order of the Trial Court Filed March 22, 1983	13
Supplemental Motion to Vacate Filed March 31, 1983, in the Trial Court	14-16
Memorandum in Response to Defendant's Supplemental Motion to Vacate Filed April 12, 1983, in the Trial Court	17-20
Order of the Trial Court Filed May 3, 1983	21
Notice of Appeal Filed May 12, 1983, in the Trial Court	22
Opinion of the Appellate Court of Illinois, Third Judicial District, Filed on April 16, 1984, affirming conviction	23-28
Motion For Leave to Supplement the Record Filed in the Illinois Supreme Court	29-30
Order of the Illinois Supreme Court Allowing Motion For Leave to Supplement Record on Appeal, Filed December 3, 1984	31
Dr. Colen's Report (Letter 11/11/82) Filed in the Illinois Supreme Court	32-35
Dr. Beck's Report (Letter 11/12/82) Filed in the Illinois Supreme Court	36-40

Table of Contents Continued

Page

Opinion of the Illinois Supreme Court Filed on July 17, 1983, affirming conviction 41-52

Order of the United States Supreme Court Granting Leave to Proceed *in forma pauperis* and the Petition for Writ of Certiorari 53

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

ITEM	DATE
Information	October 14, 1982
Petition to Declare Defendant Sexually Dangerous	November 5, 1982
Order of Trial Court	November 5, 1982
Order of Trial Court	December 17, 1982
Indictment	January 4, 1983
Order of Trial Court	March 2, 1983
Order of Trial Court	March 4, 1983
Order of Trial Court	March 22, 1983
Order of Trial Court	May 3, 1983
Notice of Appeal	May 12, 1983
Opinion of Illinois Appellate Court, Third Judicial District	April 16, 1984
Order of Illinois Supreme Court	December 3, 1984
Order of United States Supreme Court	November 12, 1985

STATE OF ILLINOIS PEORIA COUNTY
IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT

IN CUSTODY 82-4445 COUNTY
D04320641 DCN
Suggested Bond $50,000

THE PEOPLE OF THE STATE OF ILLINOIS,
CITY OF PEORIA, a municipal corporation,
v.
TERRY B. ALLEN
719 Laura, Peoria, Ill. *Defendant*

Case No. 82CF4394

INFORMATION

Count 1 of 2, Class X

The Undersigned Charges:

That on or about October 11, 1982, in said Peoria County, State of Illinois Terry B. Allen committed the offense of Deviate Sexual Assault in that he, being of the age of 14 years and upwards, by threat of force compelled Christine Ray to perform an act of deviate sexual conduct in that he placed his sex organ in the mouth of Christine Ray, in violation of: Paragraph 11-3a, of Chapter 38, Illinois Revised Statutes.

The undersigned, on oath, says that the facts set forth above are true in substance and matter of fact.

JOHN A. BARRA, State's Attorney

By: STEPHEN PATTELLI

Sworn to me this 14th day of October, 1982. Kay F. Welch, Notary Public.

ORDER

☒ Bail Set at $50,000. ☐ Warrant of Arrest to Issue. ☒ In custody, Directive to Sheriff for October 14, 1982, at 3:30 a.m. Summons to Issue for Appearance on ____, 19__, at ____a.m./p.m. Entered 10-14-82

STATE OF ILLINOIS PEORIA COUNTY
IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT

THE PEOPLE OF THE STATE OF ILLIONIS,
CITY OF PEORIA, a municipal corporation,
v.
TERRY B. ALLEN *Defendant*

Case No. 82CF4394

INFORMATION

Count 2 of 2, Class 4

The Undersigned Charges:

That on or about October 11, 1982, in said Peoria County, State of Illinois Terry B. Allen committed the offense of Unlawful Restraint in that he knowingly and without legal authority detained Christine Ray, in violation of: Paragraph 10-3a, of Chapter 38, Illinois Revised Statutes.

The undersigned, on oath, says that the facts set forth above are true in substance and matter of fact.

JOHN A. BARRA, State's Attorney
By: STEPHEN PATTELLI

Sworn to me this 14th day of October, 1982. Kay F. Welch, Notary Public.

ORDER

☐ Bail Set at ____. ☐ Warrant of Arrest to Issue. In custody, Directive to Sheriff for _____, 19__, at ____a.m./p.m. ☐ Summons to Issue for Appearance on ____, 19__, at ____a.m./p.m. Entered 10-14-82

IN THE CIRCUIT COURT OF
THE TENTH JUDICIAL CIRCUIT OF ILLINOIS
PEORIA COUNTY
TRIAL DIVISION

Case No. 82 CF 4394

PEOPLE OF THE STATE OF ILLINOIS

Plaintiffs

v.

TERRY B. ALLEN

Defendant

PETITION

Now come the People of the State of Illinois by John A. Barra, State's Attorney of Peoria County and by Donald J. Toohill, Assistant State's Attorney of Peoria County, on this 5th day of November, 1982, and Petition this Court to declare the defendant Terry B. Allen a Sexually Dangerous Person pursuant to Illinois Revised Statutes, Chapter 38, Article 105, Section 1.01 et. seq. and in support thereof state as follows:

1. The defendant is currently charged with the criminal offense of Deviate Sexual Assault in violation of Illinois Revised Statutes, Chapter 38, Section 11-3a in the above case;

2. The defendant is presently suffering from a mental disorder which has existed for a period of more than one (1) year prior to this date;

3. The defendant has criminal propensities to the commission of sexual offenses and has demonstrated propensities toward acts of sexual assault on or about October 11, 1982, in Peoria County, State of Illinois,

he committed the offense of Deviate Sexual Assault in that he, being of the age of 14 years and upwards, by force or threat of force compelled Christine Ray to perform an act of deviate sexual conduct in that he placed his sex organ in the mouth of Christine Ray,

4. The defendant has been under psychiatric treatment as recently as March-June of 1982.

THEREFORE, The People pray that the Court appoint two qualified psychiatrists to examine said defendant and hold a hearing on said Petition and thereafter declare the defendant a Sexually Dangerous Person and grant any other relief allowed under section 105 of Chapter 38, Illinois Revised Statutes.

Respectfully submitted,

JOHN A. BARRA, State's Attorney
Peoria County, Illinois
By: /s/ DONALD J. TOOHILL
Assistant State's Attorney
Peoria County, Illinois

AFFIDAVIT

I have been first duly sworn and put under oath hereby state that I have read the above Petition and it is true and correct statement of facts.

/s/AFFIANT

Subscribed and Sworn to before me, a Notary Public, this 5 day of November, 1982.

/s/KAY F. WELCH
Notary Public

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT OF ILLINOIS
PEORIA COUNTY

Case No. 82 CF 4394

PEOPLE OF THE STATE OF ILLINOIS *Plaintiff*
v.
TERRY B. ALLEN *Defendant*

ORDER

Now on this 5th day of November, 1982, the defendant is present in open court with counsel Susan Lucas, People are present by Donald J. Toohill, Assistant State's Attorney, the court finds that the people have filed a Petition for Proceedings herein under the Sexually Dangerous Persons Act, Chapter 38, Section 105 et seq. and defendant is served with a copy of said Petition and the procedure and rights under said act are explained to him and he indicates he understands the nature of the proceedings.

Pursuant to said petition the court orders that the following psychiatrists are appointed to examine the defendant herein.

1. Dr. Bradford E. Colen
2. Dr. Mortimer Beck

It is further ordered that the Sheriff of Peoria County transport the defendant for said examinations as follows:

1. To the office of Dr. Colen, Suite 301, Glen Oak Medical Plaza, 120 N.E. Glen Oak, Peoria, Ill. at the hour of 1:00 p.m. on Thursday, November 11, 1982.
2. To the office of Dr. Beck, 4617 N. Prospect Rd., Peoria Heights, Ill. at the hour of 1:00 p.m. on Friday, November 12, 1982.

At the completion of said examinations, return the defendant to the Peoria County Jail where he is to be held subject to bond herein and further Order of the Court.

ENTERED: 11/05/82

/s/JUDGE OF THE TENTH JUDICIAL CIRCUIT

STATE OF ILLINOIS, PE[redacted] COUNTY IN THE CIRCUIT COURT OF T[redacted]ENTH JUDICIAL CIRCUIT

PEOPLE OF THE STATE OF ILLINOIS,
CITY OF PEORIA, A MUNICIPAL CORPORATION
Plaintiff,

vs.

Terry B. Allen
Defendant.

Case No. 82CF4394

JUDGE Bridge	COURT REPORTER	PLTF. ATTY: Todd U	
Date 12-17-82 Court Room 405	Court Clerk Meyer	ATTY: DEFT Lucas	

FINAL ORDER

THE DEFENDANT HAVING BEEN CALLED INTO OPEN COURT ON THIS DATE, AND:

- ☐ 1. The Defendant understandingly waives his right to a jury trial, having been fully advised of his right herein;
- ☐ 2. The Defendant enters a Plea of Not Guilty and requests a jury/bench trial;
- ☐ 3. The Defendant enters a Plea of Not Guilty.
- ☐ 4. The Defendant enters a Plea of Guilty without any agreement as to sentence after being informed of the nature of the charge, the minimum and maximum possible penalties provided by law and the consequences thereof for each charge in the Complaint/Informaton;
- ☐ 5. After full admonishment as to his rights, the defendant enters a plea of guilty pursuant to the terms of a negotiated plea agreement and the Court finds that there is a factual basis for the plea and accepts the agreement, after the defendant is informed of the minimum and maximum possible penalties provided by law and the consequences thereof for each charge in the Complaint/Information;
- ☐ 6. Although duly notified of the time and place of this hearing, the Defendant fails to appear after being called in open Court so to do;
- ☒ 7. A full preliminary hearing is conducted on this date;
- ☐ 8. Other _____

IT IS HEREBY ORDERED:

- ☐ A. The Court enters a Judgment of Not Guilty for the offense of _____
- ☐ B. The Court enters a Judgment Finding of Guilty for the said Defendant and convicts him of the offense of _____ as charged in the Complaint/Information, and
- ☐ C. Without entering judgment of guilt and with the consent of the Defendant, the Court accepts the defendant's plea of guilty and defers further proceedings and:
  - a. Places Defendant on Probation for ___ months years pursuant to Chapter 56½, Para. (710/1410) of the I.R.S.
  - b. Court Supervision is ordered for ___ months years pursuant to Chapter 38, Para. 1005-6-1, I.R.S. Defendant subject to Court Supervision's Rules and Regulations.

  THE COURT FURTHER ORDERS THAT:
  - ☐ 1. The Defendant is sentenced to pay a fine of _____, and is ordered to pay costs of _____.
  - ☐ 2. The Defendant is given until _____, 19 ____, at _____ A.M./P.M. in courtroom _____, to pay fine and costs, and if it is not paid by that date, Defendant must appear at that time in this court and show cause as to why he should not be held in contempt of court for his failure to pay.
  - ☐ 3. The Defendant make restitution as follows: _____ by _____, 19 ____
  - ☐ 4. A sentence of imprisonment for _____ days/months is imposed on the Defendant, and is to be served at:
    - ☐ a. The Peoria County Jail
    - ☐ b. The State Dept. of Corrections at _____
    - ☐ c. _____
  - ☐ 5. A sentence of periodic imprisonment for _____ days/months is imposed on the Defendant, and is to be served at:
    - ☐ a. The Peoria County Jail
    - ☐ b. The Peoria County Work Release Center, pursuant to its Rules and Regulations.
    - ☐ c. _____
  - ☐ 6. A sentence of Probation/Conditional Discharge for _____ days/months/years is imposed on the Defendant, subject to the conditions set forth in the attached Certificate of Probational/Conditional Discharge which is made a part hereof.
  - ☐ 7. Defendant is to enter into a recognizance of $ _____, with/without surety, to keep the peace towards all people of this state, especially toward the complainant, for a period of _____ pursuant to Chapter 38, Section 200-6 of the Illinois Revised Statutes, subject to the penalties provided by the law if he shall refuse.
  - ☐ 8. Defendant is to enter into a recognizance of $ _____, with/without surety, to keep the peace pursuant to Chapter 38, Section 200-6 of the Illinois Revised Statutes, subject to the penalties provided by law if he shall refuse.
- ☒ D. The Court orders Count(s) all / the ~~complaint~~ dismissed after the Preliminary Hearing was held and no probable cause was found/~~no Preliminary Hearing was held for failure of witnesses to appear OR for lack of sufficient evidence to proceed.~~
- ☐ E. The Court orders Count(s) _____ of Complaint/the Information dismissed on motion of People/Defendant/Court.
- ☐ F. Defendant's appeal rights fully explained pursuant to Chapter 110A, Para. 605.
- ☒ G. Other: Defendant advised by [illegible]

ENTERED: 12/17/82

Judge of the Tenth Judicial Circuit

6

STATE OF ILLINOIS PEORIA COUNTY
IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT

THE PEOPLE OF THE STATE OF ILLINOIS,
v.
TERRY B. ALLEN
719 Laura, Peoria, Ill. DOB: 1-3-59 *Defendant*

Case No. 82 CF 4394
82-4445 County

BILL OF INDICTMENT

THE GRAND JURY CHARGES In Count 1 of 2, a Class X:

That on or about October 11, 1982, in said Peoria County, State of Illinois, Terry B. Allen committed the offense of Deviate Sexual Assault in that he, being of age of 14 years and upwards, by force compelled Christine Ray to perform an act of deviate sexual conduct in that he placed his sex organ in the mouth of Christine Ray, in violation of Paragraph 11-3a, of Chapter 38, Illinois Revised Statutes.

Filed: Jan. 4, 1983

STATE OF ILLINOIS PEORIA COUNTY
IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT

THE PEOPLE OF THE STATE OF ILLINOIS,
v.
TERRY B. ALLEN
719 Laura, Peoria, Ill. DOB: 1-3-59 *Defendant*

Case No. 82 CF 4394
82-4445 County

BILL OF INDICTMENT

THE GRAND JURY CHARGES In Count 2 of 2, a Class 4

That on or about October 11, 1982, in said Peoria County, State of Illinois, Terry B. Allen committed the offense of Unlawful Restraint in that he, knowingly and without legal authority detained Christine Ray, in violation of paragraph 10-3a, of Chapter 38, Illinois Revised Statutes.

A TRUE BILL
/s/FRED E. DICKINSON
Foreman

List of Witnesses

Detective Dale Wood, Peoria County Sheriff's Department
Christine Ray, R.R. 1, Farmington, Illinois

ORDER

This indictment having been returned in open court this 4th day of January, 1983, this case is hereby assigned to Judge Eagleton in courtroom B.

☒ Warrant of Arrest is ordered to issue, Bail is set at $10,000.

Entered January 4, 1983

/s/JUDGE

ASST. STATES ATTORNEY ASSIGNED /s/ L. PALUSKA

STATE OF ILLINOIS, PEORIA COUNTY
IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT

FILE STAMP

[illegible] 1983

[illegible] Clerk of the Circuit Court
Peoria County, Illinois

PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff,

vs.

Defendant.

CASE No. 82 CF 4394

ARRAIGNMENT ORDER

JUDGE Terry B. Allen / Eagleton		COURT REPORTER Haberer	PLTF ATTY: Palluska	
DATE: 3-2-83	COURTROOM B	CLERK Joos	ATTY: DEFT Tilton PD	CHECK IF PRESENT

The Defendant having been called into Open Court on this date, and:

☐ 1. Defendant is present and is informed of the charge in the _____ and furnished with a copy thereof;

☐ 2. The Defendant desires Court appointed counsel and the Court determines the Defendant is indigent;

☐ 3. The Defendant requests additional time for private counsel to appear;

7. Counsel identified above appears for the Defendant;

8. The Defendant waives the reading or explanation of the charge.

9. The Defendant moves that the People furnish Discovery pursuant to Supreme Court Rules;

10. The Defendant enters a plea of Not Guilty to each count of the charge;

11. The People move that the Defendant furnish Discovery pursuant to Supreme Court Rules;

X 12. The Defendant waives a Jury Trial and requests a Bench Trial on Petition

☐ 13. The People/Defendant move(s) for a continuance;

X 14. Other People move to strike paragraph 4 of the petition.

IT IS HEREBY ORDERED THAT:

☐ A. The Public Defender is/is not appointed for the Defendant;

☐ B. This matter is continued on Defendant's motion to _____, 19____, at _____ A.M. P.M.

☐ C. This matter is continued on State's motion to _____, 19____, at _____ A.M. P.M.

☐ D. This matter is continued by agreement to _____, 19____, at _____ A.M. P.M.

☐ E. The People are to furnish Discovery pursuant to Supreme Court Rules by _____, 19____.

☐ F. The Defendant is to file all motions preliminary to a plea by _____.

X G. The hearing on motions ~~filed and to strike language from petition~~ To Strike paragraph 4 of petition is set for 3-4-83 at 9:15 A.M. P.M.

☐ H. The Defendant is to furnish Discovery pursuant to Supreme Court Rules by _____, 19____.

☐ I. The Scheduling Conference is set for _____, 19____, at _____ A.M. P.M.

X J. The ~~Jury~~/Bench Trial on the Petition is set for March 4, 19 83, at 9:15 A.M. ~~P.M.~~

~~K. Other: Paragraph 4 of petition is stricken~~

ENTERED: 3/2/83

Richard S. Engbretson

JUDGE OF THE TENTH JUDICIAL CIRCUIT

STATE OF ILLINOIS PEORIA COUNTY
IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT

[R75] WHEREUPON THE FOLLOWING PROCEEDINGS WERE DULY HAD:

The Court: This is 82 CF 4394. People versus Terry B. Allen. This is a hering on the State's Petition filed November 5th, and reinstated later to have the defendant declared a sexually dangerous person.

You may proceed for the State.

Mr. Paluska: Judge, I made a Motion a couple days ago to strike Paragraph 4.

The Court: You wanted some time to consider that Motion? Shall we rule on that first? Any objection to striking Paragraph 4?

Mr. Tilton: No, Judge.

The Court: Motion is allowed.

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ILLINOIS
PEORIA COUNTY

FILED
MAR 1 1983
LEO E. SULLIVAN
Clerk Of The Circuit Court
Peoria County, Illinois

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff,

vs.

Jerry B. Allen Defendant.

CASE No. 82 CF 4394

Judge: Eagleton		Crt. Rep: Haberkorn / Valdez	Plt. Atty: Palusha ✓
Date: 3-4-83	Crt. Rm: B	Crt. Clerk: Joos	Def. Atty: Tilton PD ✓

TRIAL ORDER

The defendant being present in open Court in person and with his attorney, the Court finds that:

[X] 1. The ~~trial of this cause~~ hearing on petition was commenced on 3-4, 19 83;

2. [ ] a. The defendant and his counsel, and the States Attorney on behalf of the People were present in open Court at all stages of the trial of this case, and that a jury of twelve plus _____ alternate juror(s) (was/were) selected, accepted by all parties and sworn by the clerk to try the issues in the case, and that both parties were present for the selection of the jury and the jury returning its verdict(s) into open Court, and that all the members of the jury were present as required by law during the trial of this case, including the returning of the verdict(s) into open Court;

[ ] b. The Court held a conference on jury instructions with counsel for both parties outside of the presence of the jury and that, thereafter, the Court instructed the jury as to the law applicable to the case, the bailiffs were sworn by the clerk to take charge of the jury during its deliberations, the alternate jurors were discharged from further consideration of the case, and the jury at _____ A.M./P.M., on _____, 19 _____, in custody of the bailiffs, retired to the jury room to commence its deliberations;

[ ] c. The Court took the matter under advisement, with decision to be announced at a later date.

3. [ ] a. The defendant waived his right to a trial by jury in open Court on _____, 19 _____, and trial was thereafter conducted by the Court, with the defendant and his counsel and the people by the States Attorney being present in open Court at all stages of the trial;

[X] b. At the close of all evidence from both parties the Court began its deliberations at 4:00 ~~A.M.~~/P.M. on 3-4, 19 83;

[ ] c. The Court took the matter under advisement, with decision to be announced at a later date.

[X] 4. That on 3-4, 19 83, at 4:10 ~~A.M.~~/P.M. the (Court/~~jury~~) returned its [finding(s) ~~verdict(s)~~] in open Court as follows: To be a sexually dangerous person.

[X] a. The (Court/~~jury~~) finds the defendant ~~not guilty~~;

[ ] b. The (Court/jury) finds the defendant guilty of _____;

[ ] 5. That said verdict(s) (was/were) signed by the foreman of the jury, and the eleven other jurors;

6. [ ] a. The polling of the jury is waived by both parties;

[ ] b. The jury is polled and, all jurors answering in the affirmative, the Court finds the verdict(s) to be the true verdict(s) of the jury;

[X] 7. Other: Court finds also that defendant is suffering from a mental disorder, which has existed for a period not less than one year; that Δ has propensities to commit sex offenses and Δ has demonstrated said propensities.

IT IS ORDERED THAT:

[ ] A. The [finding(s) of the Court/verdict(s) of the jury] (is/are) hereby received and (is/are) entered of record;

[ ] B. The jury be and is hereby discharged from further consideration of this case;

[ ] C. Upon a (finding/verdict) of not guilty, a judgement of acquittal is entered and the defendant is ordered discharged from all further proceedings in this case;

[X] D. Post-trial motions set for hearing on April 15, 19 83 at 11:30 A.M./P.M.;

[ ] E. This matter is referred to the Adult Probation Office of Peoria County for a pre-sentence investigation and report and if post-trial motions are filed and denied, or not filed, sentencing hearing is set for said motions date and hour;

[ ] F. Other: _____

Entered: 3/4, 1983.

Richard E. Eagleton
Judge of the Tenth Judicial Circuit

BEST AVAILABLE COPY

IN THE CIRCUIT COURT OF
THE TENTH JUDICIAL CIRCUIT OF ILLINOIS
PEORIA COUNTY

Case No. 82 CF 4394

PEOPLE OF THE STATE OF ILLINOIS
Plaintiff

v.

TERRY B. ALLEN
Defendant

MOTION TO VACATE

Defendant, for a Motion to Vacate, states:

All statements of the Defendant made to the two testifying psychiatrists should have been inadmissible as evidence because the People failed to prove their voluntary nature after Defendant objected to their admission.

Hand delivered 3/22/83—2:00 p.m.

/s/K.W. TILTON
ATTORNEY FOR DEFENDANT

STATE OF ILLINOIS, PEORIA COUNTY
IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT

FILE STAMP

FILED
1983

PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff,

vs.

Defendant.

CASE No. 82CF 4394

~~ARRAIGNMENT~~ ORDER

Jerry B. Allen

JUDGE J Eagleton	COURT REPORTER Bortz	PLTF ATTY: Palusha	✓
DATE: 3-22-83 COURTROOM B	CLERK Jos	ATTY: DEFT Tilton PD (CHECK IF PRESENT)	✓

The Defendant having been called into Open Court on this date, and:

- ☐ 1. Defendant is present and is informed of the charge in the _____ and furnished with a copy thereof;
- ☐ 2. The Defendant desires Court appointed counsel and the Court determines the Defendant is indigent;
- ☐ 3. The Defendant requests additional time for private counsel to appear;
- ☐ 4. Counsel identified above appears for the Defendant;
- ☐ 5. The Defendant waives the reading or explanation of the charge;
- ☐ 6. The Defendant moves that the People furnish Discovery pursuant to Illinois Supreme Court rules;
- ☐ 7. The Defendant enters a plea of Not Guilty to each count of the charge;
- ☐ 8. The People move that the Defendant furnish Discovery pursuant to Illinois Supreme Court rules;
- ☐ 9. The Defendant waives a Jury Trial and requests a Bench Trial after admonition;
- ☒ 10. The People/Defendant move(s) for a continuance;
- ☒ 11. Other People move to continue trial setting; People move for reduction on trial of criminal charge

IT IS HEREBY ORDERED THAT: Δ bond on Criminal charge to P.R. and in alternative that Δ be released without bail on criminal charge

- ☐ A. The Public Defender is/is not appointed for the Defendant;
- ☐ B. This matter is continued on Defendant's motion to _____ ,19 _____ , at _____ A.M. P.M.
- ☒ C. This matter is continued on State's motion to May 9 ,19 83 , at 9:15 A.M. ~~P.M.~~
- ☐ D. This matter is continued by agreement to _____ ,19 _____ , at _____ A.M. P.M.
- ☐ E. The People are to furnish Discovery pursuant to Supreme Court Rules by _____, 19 _____.
- ☐ F. The Defendant is to file all motions preliminary to a plea by _____;
- ☒ G. The hearing on motions filed ~~and to plead the charge~~ is set for April 15, 1983 at 11:30 A.M. ~~P.M.~~
- ☐ H. The Defendant is to furnish Discovery pursuant to Supreme Court Rules by _____, 19 _____.
- ☒ I. The Scheduling Conference is set for April 28 ,19 83 , at 1:15 ~~A.M.~~ P.M.
- ☒ J. The Jury/~~Bench~~ Trial is set for May 9 ,19 83 , at 9:15 A.M. ~~P.M.~~
- ☒ K. Other Director of Corrections is hereby appointed guardian of the person of the Defendant. Defendant remanded to custody of Sheriff of Peoria. Δ ordered held pending hearing on motions set for April 15, 1983, but released without bail on criminal charges

ENTERED: 3/22/83

Richard E Eagleton
JUDGE OF THE TENTH JUDICIAL CIRCUIT

BEST AVAILABLE COPY

IN THE CIRCUIT COURT OF
THE TENTH JUDICIAL CIRCUIT OF ILLINOIS
PEORIA COUNTY

Case No. 82 CF 4394

PEOPLE OF THE STATE OF ILLINOIS
Plaintiff,

v.

TERRY ALLEN,
Defendant

SUPPLEMENTAL MOTION TO VACATE

1. The State failed to prove the Defendant sexually dangerous beyond a reasonable doubt.

2. This Defendant further moves for a Motion to Vacate for any and all other errors which may be determined by an examination of the transcript of proceedings herein, which transcript is not available to this Defendant at the time this motion was filed.

3. The State's two psychiatric witnesses, Dr. Mortimer D. Beck, M.D. and Dr. Bradford E. Colen, M.D., should not have been permitted to testify as to their conclusions regarding TERRY B. ALLEN'S condition as a result of the State's failure to prove that TERRY B. ALLEN'S statements made to them were voluntary.

Defendant was in custody on November 11, 1982 when he made statements to Dr. Colen, and on November 12, 1982 when he made statements to Dr. Beck. These statements were in the nature of admissions and confessions to certain acts and predispositions of Defendant and forming the basis for the allegations of the People's petition. Both the doctors and the State

have previously agreed that but for the statements of Defendant the doctors could not have reached their conclusions.

At the bench trial, prior to and during the testimony of the two doctors, Defendant repeatedly objected to the admission of the testimony of the two doctors on the ground that Allen's statements were involuntary and that he had not been given his *Miranda* rights by the doctors.

The Illinois Supreme Court held in 1957 that in proceedings under the Sexually Dangerous Person's Act the admission of statements, which are in the nature of a confession, required preliminary proof of their voluntary character. *People* v. *Capoldi*, 10 Ill.2d 261, 139 N.E.2d 776 (1957). Defendant demanded that the State do this at trial and the State said it wasn't necessary and the Court agreed.

The Supreme Court has also held that the Defendant may even refuse to answer incriminating questions. *People* v. *English*, 31 Ill.2d 301, 201 N.E.2d 455 (1964).

Although another Public Defender had been appointed prior to the examination herein, there is still a separate constitutional privilege against self-incrimination. *People* v. *Potter*, 85 Ill.App.2d 151, 228 N.E.2d 238 (1967). In this trial the Court permitted the People to resist meeting their burden of proof that such a privilege had been waived.

Consistent with *Miranda*, the privilege does not apply unless the Defendant is in custody. *People* v. *Pettit*, 423 N.E.2d 513 (1981). In this case there is no doubt that the Defendant was in custody.

However, a recent Appellate Court decision has held that even in an involuntary admission case, if the examining physician has not informed the patient of his right not to testify, that that physician will not be permitted to testify as to the patient's admissions at any subsequent Court hearing. *People* v. *Collins*, 429 N.E.2d 531 (1981).

The facts and the law are clear. The Court's judgment must be vacated.

/s/Kevin William Tilton
KEVIN WILLIAM TILTON
Attorney for Defendant
KEVIN WILLIAM TILTON
PROFESSIONAL CORPORATION
617 W. Garfield Avenue
Bartonville, Illinois 61607
(309) 697-5175

(Proof of service omitted in printing)

IN THE CIRCUIT COURT OF
THE TENTH JUDICIAL CIRCUIT OF ILLINOIS
PEORIA COUNTY
TRIAL DIVISION

Case No. 82 CF 4394

PEOPLE OF THE STATE OF ILLINOIS,

Plaintiffs,

v.

TERRY ALLEN,

Defendant.

MEMORANDUM IN RESPONSE TO DEFENDANT'S SUPPLEMENTAL MOTION TO VACATE

Now comes the People of the State of Illinois by John A. Barra, State's Attorney of Peoria County and by Larry G. Paluska, Assistant State's Attorney, and in response to defendant's Supplemental Motion to Vacate state as follows:

The Sexually Dangerous Persons Act, (Illinois Revised Statutes, Chapter 38, Paragraphs 105-1.01 to 105-12, hereinafter "The Act"), requires treatment for this defendant, not punishment for a crime. The defendant is afforded some, but not all of the safeguards present in a criminal prosecution. *People* v. *English*, 31 Ill. 2d. 301, 201 N.E.2d. 455 (1964), (attached hereto as an exhibit).

For example, in *People* v. *Capoldi*, 10 Ill.2d. 261, 139 N.E.2d. 776 (1957), it was held that when proceeding under The Act, preliminary proof of voluntariness was required before the admission into evidence of two signed confessions in the form of answers by the defendant and questions asked of the defendant by the police, while in the custody of police. No

such evidence was offered in this case, where the victim testified concerning the criminal acts of the defendant.

Incriminating statements to psychiatrists cannot be excluded here based on involuntariness because the defendant can be compelled to submit to the psychiatric examinations. And while the defendant cannot be compelled to incriminate himself, that privilege applies only to testimonial compulsion, and the defendant can be compelled to submit to examinations which are not testimonial in nature. *People* v. *English*, 31 Ill.2d. 301, 201 N.E.2d. 455 (1964).

The defendant in this case, represented by court-appointed counsel since October 13, 1982, chose not to exercise any privilege when examined by the psychiatrists.

It is the People's recollection that the defendant made no Motion to Suppress as evidence any confession given by him on the ground that it was involuntary. When the defendant fails to object to the introduction into evidence of a confession or admission on grounds of voluntariness, its reception into evidence is proper. *People* v. *Hicks*, 44 Ill.2d. 550, 256 N.E.2d. 823, cert. den. 400 U.S. 845, 27 L.Ed.2d 81, 91 S.Ct. 90 (1970).

The defendant failed to comply with 38 Ill. Rev. Stat. 114-11 which states in part that such a Motion shall be in writing, made before trial, and state facts showing wherein the confession was involuntary. Pursuant to 114-11(c) the Court shall conduct a hearing if the Motion states facts which, if true, show that the confession was not voluntarily made. The defendant, in his oral Motion, likewise failed to state such facts.

By failing to make a timely, written Motion which complied with the requirements of Section 114-11, the defendant has waived any issue concerning the suppression of evidence of his admissions and confessions.

The record clearly shows that the statements to doctors were voluntarily and understandingly made, and there is no plausible argument to the contrary. Both doctors testified and were subject to cross-examination. In *People* v. *Thorpe*, 52 Ill.App.3d. 576, 367 N.E.2d. 960 (1977), the Court held that

even if defense counsel had not stipulated to the admission of statements voluntarily made by the defendant after arrest, they would have been admissible at the hearing under the Sexually Dangerous Persons Act, because the officer who took the statements testified at the hearing and the defendant had the opportunity to cross-examine.

Doctor Beck testified that prior to interviewing the defendant, he had informed the defendant of the purpose of their interview and that anything the defendant told him could be used in the report which would be submitted to the Court and the respective attorneys. The defendant willingly talked with both doctors, and the testimony of either doctor is sufficient to establish a *prima facie* case in the absence of contradictory reports. *People* v. *Olmstead*, 32 Ill.2d. 306, 205 N.E.2d. 625 (1965). There is no contradictory evidence in this case.

Even if a separate hearing were required, the failure to conduct same is harmless error. Doctor Beck's warnings to the defendant as well as the record when read as a whole indicate the defendant knowingly, voluntarily participated in the interviews. The defendant fails to allege or show how he is prejudiced by the absence of a separate hearing where similar evidence would be elicited to establish voluntariness. At no time while this case was pending did the defendant request that he or any other witness be permitted to testify to any circumstances reflecting upon the voluntariness of his statements.

The defendant cites *People* v. *Potter*, 85 Ill.App.2d. 151, 228 N.E.2d. 238 (1967) for the proposition that the defendant has a constitutional right against self-incrimination. In *Potter*, the defendant was arrested, interrogated by the police, and examined by psychiatrists, all before the defendant was appointed an attorney.

The defendant cites *People* v. *Pettit*, 97 Ill.App.3d. 692, 423, N.E.2d. 513 (1981) for the proposition that *Miranda* applies only if the defendant is in custody, and the people agree that there is no question that the defendant here was in custody.

But a careful reading of the case emphasizes why *Miranda* in inapplicable here. The Court states at 698, "however, the failure to administer, *Miranda* warnings will only render a statement inadmissible when it was the result of custodial interrogation by law enforcement officials," and on page 699, citing the landmark case, "The definition of custodial interrogation as prescribed in *Miranda* is 'questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.' (*Miranda* v. *Arizona*, (1966) 384 U.S. 436, 444 16 L.Ed.2d. 694, 706 S.Ct.1602, 1612)."

Furthermore, statements not induced by the police and confessions or admissions made by the defendant in response to interrogation by private citizens are admissible in evidence without Miranda warnings having been given. *People* v. *Hawkins*, 53 Ill.2d.181, 290 N.E.2d. 231 (1972).

In our case, the defendant complains of statements made not to law enforcement officials, but to psychiatrists who, on November 5, 1982 in the presence of the defendant and his Court-appointed attorney, were ordered by the Court to examine the defendant.

In re Collins, 102 Ill.App.3d. 138, 429 N.E.2d. 531 (1981), (cited by defendant as *People* v. *Collins*, 429 N.E.2d. 531 (1981), involved the reversing of an Order finding the respondent subject to involuntary admission to the Department of Mental Health because mandates of the Mental Health and Developmental Disabilities Code (Ill.Rev.Stats. 1979, Ch. 91½, Para. 3-208) were not complied with, and that case is totally inapplicable to the instant case.

The People agree with the defendant that the facts and the law are clear.

Respectfully submitted,

/s/LARRY G. PALUSKA
Larry G. Haluska
Assistant States Attorney
Peoria County, Illinois

STATE OF ILLINOIS, PEORIA COUNTY
IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT

PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff,

vs.

Defendant.

CASE No. 82 CF 4394

FILE STAMP

FILED

MAY 3 1983

LEO E. SULLIVAN
Clerk of The Circuit Court
Peoria County, Illinois

[redacted] ORDER

JUDGE Jerry B. Alley / Eagleton	COURT REPORTER Sykta	PLTF ATTY: Galusha	✓
DATE: 5-3-83 COURTROOM B	CLERK Jones	ATTY: DEFT Lilton PD (CHECK IF PRESENT)	✓

The Defendant having been called into Open Court on this date, and:

☒ 1. Defendant is present ~~and is informed of the charge in the ____ and furnished with a copy thereof~~;

☐ 2. The Defendant desires Court appointed counsel and the Court determines the Defendant is indigent;

☐ 3. The Defendant requests additional time for private counsel to appear;

☒ 4. Counsel identified above appears for the Defendant;

☐ 5. The Defendant waives the reading or explanation of the charge;

☐ 6. The Defendant moves that the People furnish Discovery pursuant to Illinois Supreme Court rules;

☐ 7. The Defendant enters a plea of Not Guilty to each count of the charge;

☐ 8. The People move that the Defendant furnish Discovery pursuant to Illinois Supreme Court rules;

☐ 9. The Defendant waives a Jury Trial and requests a Bench Trial after admonition;

☐ 10. The People/Defendant move(s) for a continuance;

☒ 11. Other Matter having come on for a ruling on defendant's motion to vacate
IT IS HEREBY ORDERED THAT: Δ moves for appeal bond and stay.

☐ A. The Public Defender is/is not appointed for the Defendant;

☐ B. This matter is continued on Defendant's motion to _____, 19 _____, at _____ A.M. P.M.

☐ C. This matter is continued on State's motion to _____, 19 _____, at _____ A.M. P.M.

☐ D. This matter is continued by agreement to _____, 19 _____, at _____ A.M. P.M.

☐ E. The People are to furnish Discovery pursuant to Supreme Court Rules by _____, 19 _____.

☐ F. The Defendant is to file all motions preliminary to a plea by _____;

☐ G. The hearing on motions filed and to plead the charge is set for _____ at _____ A.M. P.M.

☐ H. The Defendant is to furnish Discovery pursuant to Supreme Court Rules by _____, 19 _____.

☐ I. The Scheduling Conference is set for _____ at _____ A.M. P.M.

~~☐ J. The Jury/Bench Trial is set for~~ Motion for a stay without bond is denied. Trial setting is cancelled.
_____, 19 _____, at _____ A.M. P.M.

☒ K. Other After hearing Motion to Vacate is denied and defendant is ordered remanded to the custody of Sheriff for transportation to defendant's guardian, the director of corrections, Dept. of corrections pursuant to this courts orders of March 4, and March 22, 1983. The Clerk ordered to file a notice of appeal; Appeal bond is set at $10,000 - no additional condition that defendant makes appeal bond to present a Mental Health treatment plan to court before release
ENTERED: _____
JUDGE OF THE TENTH JUDICIAL CIRCUIT
5/3/83
appellate defender is appointed & free transcript ordered
appeal bond set $10,000 - cash 10% does not apply

WHITE - CLERK'S COPY YELLOW - STATE'S COPY PINK - DEFENDANT'S COPY GOLD - SHERIFF'S COPY

Form U-14 (Rev. 5/81)

BEST AVAILABLE COPY

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FROM THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT PEORIA COUNTY

Case No. 82 CF 4394

PEOPLE OF THE STATE OF ILLINOIS
Plaintiff-Appellee,

v.

TERRY B. ALLEN
Defendant-Appellant.

NOTICE OF APPEAL

1. This appeal is being taken from the Trial Order of March 4, 1983, finding the Defendant to be a sexually dangerous person and the Order of May 3, 1983, denying the Motion to Vacate.

2. By this appeal, the Defendant-Appellant will ask the Appellate Court to reverse the Trial Order and enter Judgment on behalf of the Defendant-Appellant as matter of law, or such other relief as the Defendant-Appellant may be entitled to on this appeal.

/s/KEVIN W. TILTON
KEVIN WILLIAM TILTON
Trial Counsel for
Defendant-Appellant

Appellant's Attorney on Appeal
Robert Agostinelli
Deputy Defender, Office of the
State Appellate Defender
Third Judicial District
628 Columbus Street, Suite 308
Ottawa, Illinois 61350
(815) 434-5531

APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

No. 3-83-0342.
123 Ill.App.3d 669
78 Ill.Dec. 957

The People of the State of Illinois,
Plaintiff-Appellee,

v.

TERRY B. ALLEN
Defendant-Appellant.

April 16, 1984.

STOUDER, Presiding Justice.

On October 14, 1982, defendant, Terry Allen, was charged in the circuit court of Peoria County by information with the unlawful restraint and deviate sexual assault of Christine Ray, pursuant to Sections 11-3 and 10-3 of the Illinois Criminal code. (Ill. Rev.Stat.1981, Ch. 38, Pars, 11-3 and 10-3). On November 5, 1982, the State petitioned to have Allen declared a sexually dangerous person under Article 105 of the Criminal Code (Ill.Rev.Stat.1981, Ch. 38, Article 105). Two psychiatrists were appointed and order to examine and evaluate the defendant. After a probable cause hearing, the criminal charges were dropped. Defendant was then recharged by indictment, the petition to declare defendant a sexually dangerous person was reinstated and defendant waived his right to a jury.

The cause proceeded to a bench trial on March 4, 1983. Both court appointed psychiatrists testified as well as the alleged victim, Christine Ray. The defense presented no evidence. The court found that the State had proven defendant a sexually dangerous person. We do not agree that the defendant could

have been proven sexually dangerous beyond a reasonable doubt based upon the evidence.

The applicable statutory provision, Section 105.1.01, defines sexually dangerous person as

> "All persons suffering from a mental disorder, which mental disorder has existed for a period of not less than one year, immediately prior to the filing of the petition * * * , coupled with criminal propensities to the commission of sex offenses, and who have demonstrated propensities toward acts of sexual assault * * * are hereby declared sexually dangerous persons."

These three elements, 1), the one year provision; 2), a propensity to commit sexual offenses and 3), demonstrated propensities toward acts of sexual assault, must all be proven beyond a reasonable doubt. *People* v. *Pembrock*, (1974), 23 Ill.App.3d 991, 320 N.E.2d 470. In this case the psychiatric testimony of the court appointed psychiatrists, Drs. Colen and Beck, must have been relied upon by the court to establish all of these elements of the offense because Christine Ray's testimony pertains to only one incident of sexual assault which occurred only a few weeks previous to the filing of the petition and the defendant had no previous convictions. Therefore, the psychiatric testimony must have been used by the trial court to establish that the defendant had had a mental disorder for one year previous to filing the petition, that defendant had a propensity to commit sex offenses and to demonstrate the defendant's propensity toward acts of sexual assault. This psychiatric testimony was based solely upon statements made by the defendant and therefore the State made its entire case from the defendant's unwarned statements. This was clearly a violation of defendant's constitutional right not to be forced to incriminate himself.

Although a procedure under the Sexually Dangerous Persons Act is said to be civil in nature, criminal safeguards apply to the Act because implementation of the Act can result in a substantial deprivation of the defendant's liberty. *United States ex rel. Stachulak* v. *Coughlin*, 520 F.2d 931 (7th Cir.

1975). Specifically, the right against self-incrimination applies, *People* v. *Capoldi* (1957), 10 Ill.2d 261, 139 N.E.2d 776, and a defendant cannot be forced to make incriminating statements to a psychiatrist during a compulsory examination mandated by the statute. *People* v. *English* (1964), 31 Ill.2d 301, 201 N.E.2d 455. The U.S. Supreme Court went even further in *Estelle* v. *Smith* (1981), 451 U.S. 454, 101 S.Ct. 1866, 68 L.Ed.2d 359, in applying the privilege against self-incrimination to compulsory psychiatric examination which was later used to establish the defendant's dangerousness by requiring *Miranda*-type warnings be given and counsel be offered previous to the compulsory examination. We find *Estelle* v. *Smith* directly applicable to the compulsory psychiatric examinations to which this defendant was subjected and which the trial court must have relied upon to establish all three elements which the statute required be satisfied in order to find the defendant a sexually dangerous person. The record clearly shows that defense counsel objected to the admission of the psychiatrists' testimony on the grounds that the defendant must not be forced to incriminate himself. Dr. Colen never warned the defendant that anything he said might later be used to find him sexually dangerous nor did Dr. Beck give an adequate warning. Therefore, the trial court could not rely solely upon the defendant's unwarned statements to the psychiatrists to find the defendant a sexually dangerous person.

We have not lost sight of the fact that Christine Ray, a victim of an alleged assault, testified in this proceeding. However, her testimony even if sufficient to establish one act, it pertained to only one act which was not adequate to satisfy the multiple acts requirement of the third element of the statutory definition. Also, no prior convictions were admitted in this case.

For the above reasons we reverse the decision of the circuit court of Peoria County.

Reversed.

ALLOY, J., concurs.

HEIPLE, J., dissents.

HEIPLE, Justice, dissenting:

Pursuant to section 4 of the Sexually Dangerous Persons Act, (Ill.Rev.Stat.1981, ch. 38, par. 105-4) (hereinafter Act), the defendant was ordered to undergo psychiatric examinations to determine whether he was sexually dangerous. Two psychiatrists testified based on their examinations, the defendant was mentally ill and exhibited propensities to commit sex crimes. The majority finds that this testimony was inadmissible because the defendant was not given *Miranda* warnings before the examinations in violation of his fifth amendment rights. I dissent.

The majority opinion proceeds from the erroneous premise that the defendant was compelled to incriminate himself because his statements to the psychiatrists were used to show that he was a sexually dangerous person. Not so. Proceedings under the Act are civil in nature. (Ill.Rev.Stat.1981, ch. 38, par. 105-3.01.) Therefore, a defendant's statements are incriminating only if they expose the defendant to actual criminal prosecution as opposed to a determination of his civil mental status under the Act.

In *People* v. *English* (1964), 31 Ill.2d 301, 307, 201 N.E.2d 455, the Illinois Supreme Court held that a defendant can be compelled to answer questions during a psychiatric examination under the Act so long as he is not forced to make incriminating statements:

> "We hold that the privilege against self-incrimination protects defendant from making any statements to the psychiatrists which may tend to incriminate him. *This does not mean, however, that defendant is privileged from submitting to any examination.* In *People* v. *Greer*, 28 Ill.2d 107, 190 N.E.2d 742, and *People* v. *Munziato*, 24 Ill.2d 432, 182 N.E.2d 199, we held that the privilege protects only against testimonial compulsion. Thus, defendant can be compelled to submit [to] those parts of the examination which do not call upon his testimonial capacity, even though some of the information obtained may be incriminating; and he can, of course, be compelled to make

> replies as long as the questions do not require an answer which may tend to incriminate him." (Emphasis added.)

According to *English*, a defendant's privilege against self-incrimination does not extend to a disclosure of his mental condition unless it would also reveal criminal conduct independent of the defendant's status under the Act. The majority has departed from this rule by defining an incriminating statement as anything which is used to support a finding of sexual dangerousness. If this definition is followed, then a defendant may refuse to answer all questions during an examination on fifth amendment grounds. This is clearly contrary to *People* v. *English*.

United States ex. rel. Stachulak v. *Coughlin* (7th Cir. 1975), 520 F.2d 931, does not support the majority's position. In *Coughlin*, the court held that in proceedings under the Act, the State must prove its case beyond a reasonable doubt. Although this requirement has been incorporated into the Act, proceedings thereunder remain civil in nature. (Ill.Rev.Stat.1981, ch. 38, par. 105-3.01.)

Coughlin also held that the privilege against self-incrimination applied to the Act but did not discuss the issue in depth. Instead, the court cited with approval *People* v. *English* which the majority has now rendered obsolete.

Likewise, *Estelle* v. *Smith* (1981), 451 U.S. 454, 101 S.Ct. 1866, 68 L.Ed.2d 359, provides no authority for suppressing all unwarned statements made during a psychiatric examination under the Act. *Estelle* addressed the issue of a defendant's fifth amendment rights during a compulsory psychiatric examination prior to a death penalty hearing which is a criminal proceeding. *Estelle* should not be employed as a precedent in civil matters such as the present case.

In my opinion, the lack of *Miranda*-type warnings prior to the defendant's examinations should not render incriminating statements inadmissible in this proceeding. Such incriminating statements made by the defendant should be held inadmissible only in subsequent criminal prosecutions. I am aware that in

People v. *Potter* (1967), 85 Ill.App.2d 151, 228 N.E.2d 238, the court held that such statements would be inadmissible both under the Act and in a subsequent criminal prosecution. However, I would decline to follow *Potter* insofar as it purports to bar use of the unwarned statements in a proceeding under the Act.

Indeed, in the present case, there is no indication that the defendant made incriminating statements which exposed him to potential criminal prosecution. Therefore, the lack of warnings does not render the psychiatrist's testimony inadmissible. I would affirm the circuit court's judgment finding the defendant to be a sexually dangerous person.

No. 60184

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,
Plaintiff-Appellant,

v.

TERRY B. ALLEN,
Defendant-Appellee.

Appeal from the Appellate Court of Illinois, Third Judicial District, No. 3-83-0342

There heard on Appeal from the Circuit Court of the Tenth Judicial Circuit, Peoria County, Illinois, No. 82-CF-4394

MOTION FOR LEAVE TO SUPPLEMENT THE RECORD

Now come the People of the State of Illinois, through their attorney, NEIL F. HARTIGAN, Attorney General of the State of Illinois, pursuant to Rule 329 of the Rules of this Court to seek leave of this court to supplement the record on appeal with the certified reports of Howard Marcum (two reports), Bradford Colen and Mortimer Beck. All of these reports were filed by defendant in the Third District Appellate Court in support of defendant's motion for release on bond and are needed to decide defendant's present bond motion pending in this Court. Moreover, two of these reports were ordered by the Peoria County Circuit Court Judge and were filed with that court pursuant to statutory requirement. The authors of those

reports testified to the contents of the reports, and these documents were relied upon by the circuit court judge to reach the finding now challenged on appeal. Finally, the reports were appended to the petition for leave to appeal in this Court. Because these documents are needed to present the issue on appeal in a full and fair manner, the People of the State of Illinois respectfully seek leave to supplement to the extent that these documents are not already part of the record on appeal.

Respectfully submitted,

NEIL F. HARTIGAN
Attorney General
State of Illinois

BY: /s/Sally L. Dilgart

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STATE OF ILLINOIS
SUPREME COURT CLERK
SUPREME COURT BUILDING
SPRINGFIELD 62706
December 3, 1984

JULEANN HORNYAK
CLERK OF THE COURT
(217) 782-2035

State Appellate Defender
628 Columbus Street
Ottawa, IL 61350

ATTN: JEAN HERIGODT

THE COURT HAS TODAY ENTERED THE FOLLOWING ORDER IN THE CASE OF:

No. 60184 - People State of Illinois, appellant, v. Terry B. Allen, appellee.

Motion by appellant for leave to supplement record on appeal. Motion *allowed*.

Motion by appellee for leave to respond to motion by appellant for an extension of time for filing brief and to order his release under Rule 604(a)(3), or, in the alternative to reduce or modify bond. Motion *denied*.

JH:th
cc: AG - Criminal
SAASC - Ottawa, IL (John X Breslin)
SA - Peoria Co.

BRADFORD E. COLEN, M.D., S.C.
MAC BRADLEY, PH.D., P.C.
SUITE 301, GLEN OAK MEDICAL PLAZA
120 N.E. GLEN OAK, PEORIA, ILLINOIS 61603
TELEPHONE: 637-4266

November 11, 1982

Mr. Donald J. Toohill
Assistant State's Attorney
Peoria County Courthouse
Peoria, IL 61602

RE: Mr. Terry B. Allen
Case No. 82 CF 4394

Dear Mr. Toohill:

I interviewed Mr. Terry Allen in my office on Thursday, November 11, 1982, for an extended psychiatric evaluation with reference to the question of whether or not he is a sexually dangerous person.

Mr. Allen is a 23 year-old, bearded, tall, white male who was brought to the interview by a deputy. He came from the Peoria County Jail. He appeared unkempt, his beard untrimmed, and he was somewhat distracted, confused and vague throughout the interview. He tended to answer my questions with answers, but did not volunteer any spontaneous information. Throughout the interview, he rubbed his eyes with his fingers as if he was pained having to go through the details of the story, and yet at other times, I experienced him as playing with me as someone might feign difficulty and then hide behind their hand, and look to see how you were buying their story.

He related the events surrounding the charge as follows:

He indicates that he has been charged with sexually deviant assault, and indicates that on October 13, 1982, he talked with a girl named Chris at McDonalds. He indicates that he had known her for three days prior to this because she worked there and he was a customer. He indicates that one night she

came out and started talking with him, and he asked her if she wanted to take a drive. He indicated that she had later said that he was in the back seat with a knife, and he denied this. The assumption from him was that she agreed to drive to the airport, but then he did indicate that once they had gotten to the airport, he had her commit an act of oral sex upon him. He would not describe what it was, and I had to ask him what the sexual act was. He indicated that "it was against her will, I couldn't control myself. I need help". He indicated "I have done this before, and I need help". He indicated to me that a number of times he had forced girls to perform oral sex upon him, the first time beginning at the age of 10. He indicates that in none of these times has he ever been prosecuted.

Past history:

He states he was born and reared in Peoria, Illinois. He states that his family consisted of his mother and father, four brothers and a sister. He is the fourth of six in the sibline. He indicates that his father died when he was 10 years old from alcoholism. Incidently, it is at this same age of 10 that he started his sexually dangerous acts, forcing women to perform oral sex. He indicated that he attended Von Steuben school and was in special education and attended one year of Woodruff High School in 1974, and then dropped out because of fights. He was also in special education. He indicates holding a number of odd jobs between 1975 and 1979, at which time he went into the service. He also indicated that during this period of time he lived at home with his mother. From 1979 to 1980, he was in the army and then was given military discharge because "I was doing things the sergeant couldn't understand". He indicates that between the discharge from the service in 1980 and the current time, he has not been employed and has been living with his mother. However, he did indicate that in January through March of 1981, he was hospitalized at Danville V.A. hospital and followed briefly by Dr. Pinto here at the Peoria V.A. clinic. He indicates that during that period of time he was on Mellaril, an anti-psychotic medication, and that "this helped me some". He denied other medical problems other than at

times having some stomach pain. He indicates he smokes heavily, drinks only rarely, and was not drinking on the day of the alleged offense, and has taken drugs in the past (marijuana and heroin—snorted heroin, never taken I.V.)

Mental status examination:

He spoke by answering questions but did not volunteer any information. He had primarily followable logic and associations. However, at times, his mind tended to wander. He did report to auditory hallucinations or "voices" telling him "kill yourself" since he has been jailed. He reports the voices in the past saying "They cursed me out". It is unclear to me from the interview whether or not he is in fact hallucinating. I would think it would be very important to obtain the hospital records from the Danville V.A. hospital where somebody has had a chance to evaluate him over a two to three month period of time to assess more clearly the question of the degree or actuality of psychosis. He denied delusions. His affect he reported being depressed and described both sleep and appetite disturbance. He described thoughts about ending his life, indicating "if they would give me a sheet, I would hang myself". However, in the next breath, he indicated that he wanted to be hospitalized to get help. It was hard for me to understand him saying in one breath "I don't want to go on, I'd like to end my life" and then in the next breath indicating that he wanted hospitalization and wanted help. I asked him the date today, and he was able to give me the day and month, and then had a hard time recalling the year, even though a sentence prior to that he had been able to tell me that it was January through March of 1981, the year preceding this year when he had been hospitalized. Again this is unclear to me how much this is him attempting to not be clear, or he was just unable to be clear. He was unable to remember three out of three objects after five minutes. He did not understand the proverb about "not crying over spilt milk".

Discussion:

Mr. Allen is a 23 year-old, white, single male with a long-standing history of problems with being in special education

classes, getting into fights, and therefore dropping out of school. He also reported having a "problem that a sergeant couldn't understand" in the service and therefore being discharged early. He reports to psychotic symptoms of audidtory hallucinations. He also reports to being very close to his father, who died when Me. Allen was 10, the age at which these acts began. One can't but imagine that Mr. Allen is in fact someone who might be attempting to make up for the loss of his father by these sexually dangerous acts. He also has abused drugs and alcohol in the past.

One of the major questions in my mind is whether or not Mr. Allen is psychotic or schizophrenic. I have a very difficult time making this determination, and I think it would be very important to obtain the hospital records from the Danville V.A. hospital where someone has had a chance to examine him over a several month period of time to make this assessment more accurately. Also, currently I see him as being depressed and of possible suicidal threat, and that he would need to be watched while he is in jail.

My conclusion is that he is in fact a sexually dangerous person, having committed sexual acts and having suffered from a mental disorder as indicated by the history of at least over one year's duration. I would also feel currently it would be very important that this man's records be reviewed and the possibility of hospitalization be initiated soon to help in terms of his depression, the possibility that he is psychotic and suicidal, and then to assess the question of what should be done with him to protect society.

Sincerely,

/s/ Bradford E. Colen, M.D.

BRADFORD E. COHEN, M.D.

BEC:lrs

MORTIMER D. BECK, M.D. & ASSOCIATES, LTD.
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THE HONORABLE C. BRETT BODE, JUDGE
THE TENTH JUDICIAL CIRCUIT COURT
PEORIA COUNTY COURTHOUSE
PEORIA, IL 61602

November 12th, 1982

RE: TERRY B. ALLEN
82 CF 4394

Dear Judge Bode:

Introduction: This letter is regarding the court ordered forensic psychiatric evaluation which I did on Terry Allen on November 12th, 1982 for a determination regarding his being found to be a sexually dangerous person.

Statement: It was explained that I was acting with the defendant only to do this forensic examination which would result in a letter to the court and the respective attorneys and that the defendant was not coming to the office for a doctor's visit or for any other reason. He then understood that anything that he would tell me in the interview could be used in the letter. I had available to me the police reports before the examination. No attempt has been made to confirm any of the defendant's statements so as to verify that the information that I have been given is true or not. The defendant wanted to be found sexually dangerous and did so because he felt that it was a better alternative than a trial trying to be found not guilty. I made sure that he understood what the consequences were and he had a reasonable understanding of what they were.

The Refferal: The request of this exam was made by court order at the urging of Assistant States Attorney Donald Toohill, who is the prosecuting attorney in this case. The defense attorney is Mrs. Susan Lucas.

Cooperation: The defendant was very cooperative. I have the definite impression that he is unreliable and that sometimes he is not telling the truth. He might also be suggestible.

Psychiatric Interview: The defendant is 23 years of age. His birth date is 1-3-59. He admitted to the incident alleged with some exceptions. He admitted he was in the car with Christine Ray. He said that she was about 21 years of age. He admits to having sexual intercourse with her and forcing her to have his penis in her mouth. He thinks that it is possible that he could have scared her and forced her more than he thought. He said that he forced a 10 year old girl to accept his penis in her mouth when he was himself ten. Since then he has forced women on at least ten occasions to do the same. Some of these women were black and some white. Apparently none of them filed police reports or he was at least not linked to any of these other sexual attacks. He denies home invasion. They all occurred on the street. He told me that he can not by himself "stop this stuff." The alleged incident happened on the 11th of October and he was arrested on the 13th of October.

He has not had a job except for manpower and short jobs like raking leaves. He lives with his mother and one brother. He was always fighting at school and could be considered as being violent. He was in trouble with the security guards at school. Finally, he left school (he was not expelled). He went into the Army and lasted less then 1 year. This was in 1979 and 1980. He received an administrative discharge but does not know why. The sargeant told him that he could not understand his behavior. He was AWOL one time while in the service. He has had two psychiatric hospitalizations. The first was at Zeller in 1975. He could not tell me why he was there. There were fights at Zeller and he hit someone on the head with a pool cue. When I asked why he said he could not control himself. The hospitalization lasted one month. He was hospitalized at the Danville VA hospital in 1982 (at first he said it was right after he got out of the service.) He was there for three months. He said that he was allergic to thorazine that he was given. It caused his skin to become red in the sun. At Zeller he was given mellaril

but he discontinued it because it made him woozy. Both of these medicines are used for the treatment of psychotic individuals. He has been in jail twice before, once for shop lifting and the second time for suspicion. (I had asked him prior to this question how he got along without any job or money. I asked if he stole and he denied it.) He said his basic illness has depressions and highs connected with it. He denied that he misused alcohol or illicit substances. There is a strong family history of emotional illness.

Past History

Physical Health:—Good

Allergies:—Thorazine sun reaction

Alcohol: He drinks now and then. He denies any drinking problem.

Drugs: He admits to occasional heroin and marijuana use.

Parents and Family: His father was from Louisiana and died when the defendant was 10 years of age. He died of pneumonia secondary to a long history of heavy drinking. His mother is from Illinois. She lives in Peoria and he lives with her and his younger brother. There were 5 boys and 1 girl in the family. Another sister died at birth. He was the middle boy. There is an uncle who has had some emotional problems.

School: He did not finish the ninth grade.

Legal: As above.

MENTAL STATUS EXAMINATION

Appearance and Behavior: His appearance seemed average and unremarkable. His behavior seemed to be the same. There was no problem of control or violence in the one hour he was here. His voice was sometimes hard to hear. It was not modulated well. This is something sometimes seen in chronically psychotic people.

Consciousness: He is conscious, alert and concentrating well. He is adequately oriented to time (11-10-82 Thursday). In my

experience this is close enough for someone in the jail one month. He seemed to recognize the place he was in to be a doctor's office.

Memory: Recent memory is good. Past memory is good as well.

Reading, Calculation and Information: He seemed to have a very defective fund of information as if he did not pay much attention to the real world. I did not test the other two.

Personality: Cold, impulsive, calculating with the feeling that "he" is not in control.

Abstract Thinking: He seemed to be operating in the abstract mode. He did not have a definite defect of abstract operations. He uses idiosyncratic thinking rarely.

Mood: Flat and cold. There was no remorse for these violent sexual acts. He committed these violent acts in both moods of depression and high moods.

Thourgh and Judgment; He did not appear to be delusional or overtly paranoid. There were no evidences of hallucinations. His judgment was defective for the acts he committed.

Qualified Psychiatrist: I am a repudable physician licensed in Illinois to practice medicine in all of its branches. I have specialized in the diagnosis and treatment of mental and nervous disorders for a period of about 18 years.

Findings: This is a man who seems to be suffering from an mental disorder. This disorder appears to be a chronic mild to moderate schizophrenic process. It is characterized by aggressive and abnormal behavior, emotional ups and downs, behavioral deterioration, poor judgment, lack of empathy for others, lack of insight into his own behavior. He lacks hallucinations and obvious delusions. Treatment might include major tranquilizers and lithium because of the affective component to this case. This illness has existed for a period of at least seven years immediately prior to the filing of this petition. He admits to and I find a criminal propensity to the commission of violent

sexual offenses. He has demonstrated the propensity towards acts of sexual assault.

Conclusion: My psychiatric conclusion is that he is a sexually dangerous person.

Thank you for the opportunity of seeing this defendant.

Sincerely,

MORTIMER D. BECK, M.D.
Private Practice Psychiatry

SUPREME COURT OF ILLINOIS

No. 60184

THE PEOPLE OF THE STATE OF ILLINOIS,
Appellant,

v.

TERRY B. ALLEN,
Appellee.

July 17, 1985

THOMAS J. MORAN, Justice:

Defendant, Terry B. Allen, was charged by information in the circuit court of Peoria County with the crimes of unlawful restraint and deviate sexual assault. The State then filed a petition to have defendant declared a sexually dangerous person pursuant to article 105 of the Code of Criminal Procedure of 1963 (Ill.Rev.Stat.1981, ch. 38, par. 105-1.01 *et seq.*). While the sexually dangerous person petition (petition) was pending a preliminary hearing was held on the information, and the charges were dismissed for lack of probable cause. Defendant was then indicted and the petition reintstated.

Before trial on the indictment, a bench trial was held on the petition. The trial court found defendant to be a sexually dangerous person. After his post-trial motions were denied defendant appealed. The appellate court, with one dissent, reversed, holding that (1) the trial court had improperly relied upon testimony obtained in violation of defendant's privilege against self-incrimination, and (2) the State was required to prove multiple acts of sexual assault in order to show that defendant was a sexually dangerous person as defined in the statute. (123 Ill.App.3d 669, 78 Ill.Dec. 957, 463 N.E.2d 135.) We granted the State's petition for leave to appeal.

On appeal the State raises three issues, but two of these issues present the identical question. They can therefore be condensed as follows: (1) Are *Miranda* warnings required before a defendant may be examined by a psychiatrist pursuant to a court order in a sexually dangerous person proceeding? and (2) Did the defendant waive any privilege against self-incrimination which he may have had? The defendant, on cross-appeal, raises a third issue: Did the State prove beyond a reasonable doubt that the defendant was a sexually dangerous person as defined by statute?

Defendant was formally charged with unlawful restraint and deviate sexual assault. The State then filed the sexually dangerous person petition. With the defendant and defense counsel both present, the court ordered defendant to submit to two psychiatric examinations. No court reporter was present at this hearing, but the written order for the hearing states that the procedure and rights under the sexually dangerous persons statute were explained to the defendant and the defendant indicated that he understood the nature of the proceedings.

On March 4, 1983, the defendant was tried under the petition in a bench trial. The State presented three witnesses, but the defendant did not produce any evidence. The State's first witness was Dr. Bradford Colen, a psychiatrist who had interviewed defendant. Defendant objected to Dr. Colen's testimony, claiming that the doctor had elicited information from him in violation of his privilege against self-incrimination. Aside from some observations about the defendant's appearance and his apparent confusion and vagueness, Dr. Colen's testimony was based almost entirely upon defendant's statements and admissions made during the interview. The trial court ruled that defendant's statements to Dr. colen were not admissible into evidence, but allowed the doctor to give an opinion based upon his overall interview with defendant. His opinion was that defendant was mentally ill with criminal propensities to commit sex crimes.

The State's next witness was Dr. Mortimer Beck, another psychiatrist, who had examined defendant. The trial judge

again refused to allow into evidence the defendant's statements to the psychiatrist, but allowed Dr. Beck to express an opinion which was based "to a great extent" upon defendant's statements and admissions during his interview. Dr. Beck's opinion was that defendant was suffering from a mental disorder and had criminal propensities toward committing sexual assaults.

The State's final witness was Christine Ray, the victim of the alleged assault. Ray worked at a McDonald's restaurant in Peoria, and had noticed the defendant in the restaurant on October 11, 1982. She had spoken briefly to him while she was cleaning tables. After she got off work, at about 6 p.m., she sat down in a booth. Defendant came up and asked Ray if he could join her. She agreed, and the two talked for approximately 30 to 45 minutes. At some point in the conversation Ray described her automobile to defendant and mentioned the general location at which it was parked.

After ending the conversation Ray went into the restroom. When she emerged defendant was no longer in the restaurant. She went out to her automobile, where she discovered that she had left one of the doors unlocked. She got in, started the car, and pulled out of the parking lot. When she stopped at the first stop sign she noticed that defendant was in the back seat of her car.

At this point, Ray testified, defendant asked her to take him to "a romantic place." She asked him where to go and he replied "a romantic place—or else." His tone of voice, she testified, was "kind of threatening type."

At defendant's request, Ray drove to the airport. After reaching the airport she drove around the parking area a few times until defendant told her to pull into the parking lot. She pulled up to the parking gate and opened the door to reach for the parking ticket. As she reached for the ticket defendant reached over and grabbed her on the neck or shoulder. He let go, however, and she got back in the car. Defendant then climbed over into the front seat.

Ray parked the car, and defendant asked her to lift the steering wheel and put the seat back. After doing so, Ray

testified, defendant "grabbed me by the legs, set them up on the front seat." He then pulled her to a prone position and lay on top of her, simulating intercourse even though both were fully clothed.

Next, Ray testified, defendant took off his pants and asked her to take hers off also. She said no, whereupon "he reached for them, tugged them off a little bit. I finally decided to take them off." When asked by the prosecutor why she took off her pants Ray replied, "Due to the fact that he was going to get them off whatever way he wanted, anyhow."

Defendant again simulated intercourse, although Ray was still wearing panty-hose. After a short time he stopped, and asked Ray if she would perform fellatio on him. Ray said no, whereupon defendant insisted that she would. Ray asked if she could leave, to which defendant replied "after he was satisfied." Ray testified that she finally agreed to satisfy defendant if he would let her leave.

Ray then proceeded to manipulate defendant's penis manually. She testified that defendant pushed her head down, forcing her to perform fellatio. She tried to resist but because of an injury sustained in football while in school, was unable to do so.

Ray then again asked defendant if she could leave, and he agreed. With defendant still in the car she drove to the parking lot gate. Both of them exited the car, and Ray locked the car and entered the terminal to pay the parking fee. While in the terminal she told the woman who took her parking fee that a man had forced her to go to the airport, but Ray testified that she realized that the woman was not going to call airport security. She made no other attempt to summon help before returning to the car. She then gave defendant a ride to a trailer where he said a friend of his lived.

On redirect examination Ray testified that she had asked defendant several times if she could leave, and each time defendant told her that she could not leave until "he got what he

wanted." She did, however, admit that her fear of defendant was based in part upon her experiences with another man:

> "I had a fiancee and he had a drinking problem, and you went along with him, or you might have been dead, and I learned that if you halfway go along with a person to a point, that chances are you will get out of it okay, but it was a fifty-fifty chance, and I was hoping that this guy was, at least, partially like the guy that I had had all my experience with."

In *People* v. *English* (1964), 31 Ill.2d 301, 201 N.E.2d 455, this court held that sexually dangerous persons proceedings, while similar to criminal proceedings, were nonetheless essentially civil in nature. This was so even though the interests at stake mandated stricter procedural safeguards than in an ordinary civil proceeding:

> "Since the Sexually Dangerous Persons Act provides for involuntary confinement, although it be for the treatment of the defendant rather than punishment for a crime, it is natural that some of the same safeguards which are applicable in a criminal prosecution be applied to the proceedings under the act. This does not mean, however, that the commitment proceeding is a criminal prosecution or that criminal procedure as a whole must be followed in the proceeding." (31 Ill.2d 301, 304, 201 N.E.2d 455.)

See also *People* v. *Studdard* (1972), 51 Ill.2d 190, 196, 281 N.E.2d 678.

This aspect of *English* has not been affected by subsequent cases. Although the fact that incarceration may result is relevant to the question of whether or not the self-incrimination privilege applies (*In re Gault* (1967), 387 U.S. 1, 50, 87 S.Ct. 1428, 1455, 18 L.Ed.2d 527, 558-59), it is clear that "the fact that a proceeding will result in loss of liberty does not *ipso facto* mean that the proceeding is a 'criminal prosecution'." (*Middendorf* v. *Henry* (1976), 425 U.S. 25, 37, 96 S.Ct. 1281, 1289, 47 L.Ed.2d 556, 566.) In *Minnesota* v. *Murphy* (1984), 465 U.S. 420, 104 S.Ct. 1136, 79 L.Ed.2d 409, the Supreme Court applied the principle in *Middendorf* to the privilege against self-incrimination. After holding that the revocation of proba-

tion was not a criminal proceeding, the court then ruled that a defendant cannot claim the privilege merely because his answer to a question might result in revocation of his probationary status. (465 U.S. 420, ____ ____ & n. 7, 104 S.Ct. 1136, 1146-47 & n. 7, 79 L.Ed.2d 409, 424-25 & n. 7.) However, a defendant may still refuse to answer questions if the answers could be used to implicate him in a separate criminal offense. 465 U.S. 420, ____ ____ & n. 7, 104 S.Ct. 1136, 1146-47 & n. 7, 79 L.Ed.2d 409, 424-25 & n. 7.

The holding that sexually dangerous persons proceedings are not criminal prosecutions was also not altered by *People* v. *Pembrock* (1976), 62 Ill.2d 317, 342 N.E.2d 28. In *Pembrock* this court ruled that because of the liberty interests at stake in a sexually dangerous person proceeding, due process required that the State prove the defendant's status beyond a reasonable doubt. (62 Ill.2d 317, 321, 342 N.E.2d 28.) This holding has since been incorporated into the statute. (Ill.Rev.Stat.1983, ch. 38, par. 105-3.01.) *English*, however, recognized that the liberty interest at stake in such a proceeding required strict procedural safeguards, but held that not all criminal procedural safeguards need be applied. (*People* v. *English* (1964), 31 Ill.2d 301, 304, 201 N.E.2d 455.) *Pembrock*, which requires only one particular procedural safeguard, is not inconsistent with *English*.

We see no reason now to disturb that part of *English* which held that a sexually dangerous person proceeding is not a criminal prosecution. A person found to be sexually dangerous is to receive "care and treatment * * * designed to effect recovery." (Ill.Rev.Stat.1983, ch. 38, par. 105-8.) Upon recovery the defendant is released from custody and the information or indictment which led to his commitment is quashed. (Ill.Rev.Stat.1983, ch. 38, par. 105-9.) Since treatment, not punishment, is the aim of the statute, the legislative determination that the proceedings are civil in nature (Ill.Rev.Stat.1983, ch. 38, par 105-3.01) is eminently reasonable. See *Addington* v. *Texas* (1979), 441 U.S. 418, 428, 99 S.Ct. 1804, 1810, 60 L.Ed.2d 323, 332; *Tippett* v. *State of*

Maryland (4th Cir.1971), 436 F.2d 1153, 1159, *cert. dismissed sub nom. Murel* v. *Baltimore City Criminal Court* (1972), 407 U.S. 355, 92 S.Ct. 2091, 32 L.Ed.2d 791; *French* v. *Blackburn* (M.D.N.C.1977), 428 F.Supp. 1351, 1359, *aff'd* (1979), 443 U.S. 901, 99 S.Ct. 3091, 61 L.Ed.2d 869; *Cramer* v. *Tyars*, (1979), 23 Cal.3d 131, 137-38, 588 P.2d 793, 796-97, 151 Cal.Rptr. 653, 656-57; *People* v. *Poggi* (1980), 107 Cal.App.3d 581, 586, 165 Cal.Rptr. 758, 760; *In re Beverly* (Fla.1977), 342 So.2d 481, 488-89; *Commonwealth* v. *Barboza* (1982), 387 Mass. 105, 111, 438, N.E.2d 1064, 1069, *cert. denied* (1982), 459 U.S. 1020, 103 S.Ct. 385, 74 L.Ed.2d 516; *In re Matthews* (1980), 46 Or.App. 757, 762, 613 P.2d 88, 91, *cert. denied* (1981), 450 U.S. 1040, 101 S.Ct. 1757, 68 L.Ed.2d 237; *Moss* v. *State* (Tex. Civ. App. 1976), 539 S.W.2d 936, 945-48.

The appellate court believed that *People* v. *Capoldi* (1957), 10 Ill.2d 261, 139 N.E.2d 776, applied to the privilege against self-incrimination to these proceedings. (123 Ill.App.3d 669, 671, 78 Ill.Dec. 957, 463 N.E.2d 135.) This interpretation is erroneous, especially since *English*, decided after *Capoldi*, specifically held that the privilege did not apply. *Capoldi* held only that the State must make a preliminary showing as to the voluntariness of admissions sought to be introduced in a sexually dangerous person proceeding. (10 Ill.2d 261, 268, 139 N.E.2d 776.) Voluntariness and the self-incrimination privilege are separate issues, however, and in this case the in-court warnings to defendant and the fact that he was represented by counsel convince us that the preliminary showing of voluntariness was indeed made. Had the defendant claimed that the statements to the psychiatrists were involuntary then *Capoldi* might entitle him to a preliminary hearing on the question (10 Ill.2d 261, 267-68, 139 N.E.2d 776), but since defendant does not claim that the statements were involuntary then *English*, and not *Capoldi*, applies.

The holding that the privilege against self-incrimination is not required in the proceedings in question is supported by the subsequent ruling in *Mathews* v. *Eldridge* (1976), 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18. *Eldridge* set out the factors relevant to the evaluation of a procedural due process claim:

> "[f]irst, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." 424 U.S. 319, 335, 96 S.Ct. 893, 903, 47 L.Ed.2d 18, 33.

While the private interest involved in the instant proceeding is great, there are already numerous safeguards ensuring reliability, including the right to a jury trial (Ill.Rev.Stat.1983, ch. 38, par. 105-5), the requirement of proof beyond a reasonable doubt (Ill.Rev.Stat.1983, ch. 38, par. 105-3.01), and the right to confront witnesses (*People* v. *Nastasio* (1960), 19 Ill.2d 524, 168 N.E.2d 728). The privilege against self-incrimination would add little more reliability to the proceedings, especially since the privilege is not primarily concerned with reliability but is instead designed to check the power of the State over the individual. *In re Gault* (1967), 387 U.S. 1, 47, 87 S.Ct. 1428, 1454, 18 L.Ed.2d 527, 557.

Finally, the State has a substantial interest in treating as well as protecting the public from sexually dangerous persons, an interest which would be almost totally thwarted by a strict application of the self-incrimination privilege in such proceedings. If a defendant is allowed to refuse to answer questions asked during the psychiatric interview then it would be nearly impossible for the State to determine whether or not the defendant was sexually dangerous. Since the self-incrimination privilege would be a great burden to the State while being of minimal value in assuring reliability, the *Eldridge* test totally supports the holding in *English* that due process does not require the application of the privilege.

Since there is no privilege aginst self-incrimination in sexually dangerous person proceedings there is no need for *Miranda* warnings to be given. At this stage no criminal proceeding is involved. Therefore the appellate court's reliance upon *Estelle* v. *Smith* (1981), 451 U.S. 454, 101 S.Ct. 1866, 68

L.Ed.2d 359, is misplaced. In *Estelle* v. *Smith* the court held that *Miranda* warnings must be given when the defendant's statements to a court-appointed psychiatrist are used against him in the death penalty phase of a criminal prosecution. (451 U.S. 454, 468-69, 101 S.Ct. 1866, 1876, 68 L.Ed.2d 359, 372-73.) However, if the use of such statements is confined to noncriminal proceedings, no *Miranda* issue arises. 451 U.S. 454, 465, 101 S.Ct. 1866, 1874, 68 L.Ed.2d 359, 370.

While we agree with the holding in *English* that sexually dangerous persons proceedings are not criminal proceedings, we disagree with the *English* court insofar as it would allow a defendant to refuse to answer questions which may incriminate him. (*People* v. *English* (1964), 31 Ill.2d 301, 307-08, 201 N.E.2d 455.) To allow even such a limited privilege would unduly frustrate the purposes of the sexually dangerous persons provisions by making it nearly impossible to identify sexually dangerous persons. Moreover, such a privilege is not necessary to protect the defendant's fifth amendment rights. As *Estelle* v. *Smith* makes clear, courts may simply exclude the defendant's compelled testimony from use in subsequent criminal proceedings. (*Estelle* v. *Smith* (1981), 451 U.S. 454, 468-69, 101 S.Ct. 1866, 1876, 68 L.Ed.2d 359, 372-73.) We therefore hold that a defendant's statements to a psychiatrist in a compulsory examination under the provisions here involved may not be used against him in any subsequent criminal proceedings. Consequently, defendants must answer all questions at such examinations regardless of the possible incriminatory nature of the answers.

Accordingly, the appellate court erred when it barred the use of testimony based upon defendant's statements to Dr. Colen and Dr. Beck. It would have been proper to allow into evidence both the statements themselves and the psychiatrists' conclusions based thereon.

We need not reach the issue of whether or not defendant waived his privilege against self-incrimination. Our holding that he did not have such a privilege in this type of proceeding makes a discussion of waiver unnecessary.

Defendant also argues, and the appellate court apparently agreed, that the statute here involved requires that the State demonstrate more than one actual act of sexual assault or sexual molestation. The State, on the other hand, claims that the statute requires only a showing of "propensity," and does not require that the State prove any actual crime. In our view, neither position is supported by the statutory language.

Section 1.01 of the Sexually Dangerous Persons Act defines sexually dangerous persons as follows:

> "All persons suffering from a mental disorder, which mental disorder has existed for a period of not less than one year, immediately prior to the filing of the petition hereinafter provided for, coupled with criminal propensities to the commission of sex offenses, and who have demonstrated propensities toward acts of sexual assault or acts of sexual molestation of children, are hereby declared sexually dangerous persons." (Ill.Rev.Stat.1983, ch. 38, par. 105-1.01.)

In *People* v. *Pembrock* (1976), 62 Ill.2d 317, 321-22. 342 N.E.2d 28, the court construed this language as requiring proof of three separate elements:

> "(1) the existence of a mental disorder for more than one year; (2) the existence of criminal propensities to the commission of sex offenses; and (3) the existence of demonstrated propensities toward acts of sexual assault or acts of sexual molestation of children."

It is clear, therefore, that the statute requires more than the proof of mere "propensity"; it also requires that the State prove that the defendant has "demonstrated" this propensity. This language can only mean that the State must prove at least one act of or attempt at sexual assault or sexual molestation.

There is, however, nothing in the statute requiring the State to prove multiple sex crimes. One purpose of the statute is to prevent mentally ill persons from being held criminally responsible for crimes committed while mentally ill. (*People* v. *Studdard* (1972), 51 Ill.2d 190, 196, 281 N.E.2d 678; *People* v. *Sims* (1943), 382 Ill. 472, 476, 47 N.E.2d 703.) It would be illogical to

construe the statute to require that a defendant cannot be treated until he has committed more than one assault. Furthermore, the statute is primarily concerned with prediction of the defendant's future conduct; the requirement that the defendant must have "demonstrated" his propensities means only that the commitment order cannot be based *solely* on psychological speculation. We therefore hold that the plural language of the statute—"acts of sexual assault or acts of sexual molestation"—refers to the defendant's future propensities, not to the demonstrated conduct.

We must, however, address the further issue, raised on cross-appeal, of whether the evidence at trial establishes even one act of sexual assault. Therefore, the sole evidence of a sexual asault was Christine Ray's testimony. Sexual assault, at the time of the alleged crime, required a sexual act achieved by "force or threat of force." (Ill.Rev.Stat.1983, ch. 38, par. 11-3, now repealed and replaced by Ill.Rev.Stat., 1984 Supp., ch. 38, par. 12-13, which contains a similar requirement.) Defendant claims that the evidence does not establish beyond a reasonable doubt that he used force upon Christine Ray, or threatened her with force. It is for the trier of fact, however, to determine the weight and sufficiency of the evidence, and the reviewing court should not substitute its judgment for the trier of fact unless the evidence is so improbable as to raise a reasonable doubt of guilt. (*People* v. *Molstad* (1984), 101 Ill.2d 128, 133, 77 Ill.Dec. 775, 461 N.E.2d 398; *People* v. *Davis* (1983), 95 Ill.2d 1, 27, 69 Ill.Dec. 136, 447 N.E.2d 353.) In this case we are convinced that there was sufficient evidence for the trial court to find that defendant forced Christine Ray to perform sexual acts.

First of all, defendant's unnanounced appearance in Ms. Ray's automobile indicated potential hostility, as did his demand for her to drive to a "romantic place—or else." Defendant reached over and grabbed Ray at the parking lot gate when he thought she was trying to exit the car, an action which gave an ominous cast to his repeated insistence that she was not free to leave the car until "he got what he wanted." Under these circumstances the trial court could properly have found a

threat of force, and there was no need for Ms. Ray to risk injury by testing out those threats. While Ray's experiences with her former boyfriend have increased her fear of physical harm, there was adequate evidence for the trial court to find that defendant himself threatened her.

In conclusion, the appellate court erred in barring the use of testimony based upon defendant's statements to Dr. Colen and Dr. Beck, and also erred in ruling that the State must demonstrate more than one act of sexual assault. In addition, we are convinced that there was sufficient evidence to establish defendant's sexually dangerous status beyond a reasonable doubt. We therefore reverse the judgment of the appellate court and affirm the judgment of the circuit court. We remand this cause to the circuit court of Peoria County for further proceedings.

Appellate court reversed; circuit court affirmed; cause remanded.

SUPREME COURT OF THE UNITED STATES

No. 85-5404

TERRY B. ALLEN,

Petitioner,

v.

ILLINOIS

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

ON CONSIDERATION of the motion for leave to proceed herein *in forma pauperis* and of petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

November 12, 1985